IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 21731 of 2003

Between:

1. Regional Joint Director of School Education, Hyderabad.
2 District Educational Officer, Medak District at Sangareddy.
3 Government of Andhra Pradesh, represented by its Secretary, Education Department, Secretariat, Hyderabad.
4 Commissioner and Director of School Education,
Andhra Pradesh, Hyderabad.

..... PETITIONERS

AND

D.Ananth Reddy s/o late D.Ram Reddy,
School Assistant Grade.II, Z.P. High School,
Chinta Cheruvu Village, Medak District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to calling for the records relating to the order dated 21-2-2003 in OA No.10873/2002 on the file of the Hon'ble AP Administrative Tribunal and quash or set aside the same as illegal.

Counsel for the Petitioners: ADDITIONALADVOCATE GENERAL/SPECIAL GOVERNMENT PLEADER.

Counsel for the Respondent: MR.M.LAXMAN

The Court made the following:

ORAL ORDER: (per GB. J.)

The Writ Petition is filed by the State assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.10873 of 2002 dated 21.2.3003.

2. The respondent was working as School Assistant. While so he was promoted as Headmaster and in a counseling held, he was transferred to Zilla Parishad High School, Raghupatipet, Mahaboobnagar District, but, however, he did not join the said post and on other hand he filed O.A.No.2167 of 2002 and the Tribunal disposed of the same with the following directions:

> "In case the applicant did not join as HM at ZPHS, Raghupatipet in pursuance of the proceedings dated 5.2.2002, the respondents are directed to consider the case of the applicant for posting him to his convenient place as per his choice duly following the provisions of GO.Ms.No.128, Edn, dated 6.10.2001. If the applicant has joined at ZPHS, Raghupathpet, no direction can be given by this Court as the 3 year rule comes in the way of the applicant as per GO.Ms.No.128, dated 6.10.2001. Even if the applicant has joined at Raghupathipet in pursuance of the proceedings dated 5.2.2002, he is at liberty to make a representation to the Government narrating his difficulties and grievances seeking posting to a convenient place but this Tribunal cannot give any directions contrary to the provisions of GO.Ms.No.128, dated 6.10.2001.
>
> The OA is disposed of accordingly with the above directions. VMA also stands disposed of without any orders in view of the disposal of the main OA".

It is also on record that even after directions of the Tribunal, the applicant did not join at Raghupathipet and therefore the authorities passed order on 15.11.2002 stating that the respondent had forfeited his right for promotion. The said order came to be challenged by the respondent in OA.No.10873 of 2002. The learned Tribunal, after considering the previous history of the case, set aside the order of the authorities dated 15.11.2002 and further directed the petitioners herein to promote the respondent to the post of Headmaster as per his seniority with all consequential benefits. Aggrieved by the said order, the

present Writ Petition has been filed by the State.

3. The learned Special Government Pleader representing the learned Advocate General submits that the order of the Tribunal is wholly illegal and contrary to law. He submits that the authorities have followed the order passed by the Tribunal in OA.No.2167 of 2002. He further submits that if the respondent failed to join the duty, necessarily he would be attracted by the forfeiture clause and therefore it was intimated to the respondent by an order dated 15.11.2002 that he had forfeited his right to promotion. Under those circumstances the Tribunal ought not to have interfered with the order passed by the authorities.

4. Per contra, the learned counsel for the respondent submits that the petitioners have violated the orders of this Court from time to time. Even the directions given by the Tribunal in OA.No.2167 of 2002 were also not followed and on the other hand they have intimated the respondent that he had forfeited the right of promotion. Under those circumstances he submits that the order of the Tribunal cannot be said to be either illegal or contrary to law.

5. We have heard the learned counsel for the parties at length.

6. It is not in dispute that though the respondent was promoted as Headmaster, he did not join the post on the ground that some of his juniors were shown as seniors to him in the seniority list. It is pertinent to note that the Tribunal held that after joining the post, it is always open for the respondent to agitate the said issue before the appropriate authority by filing a representation, but for the reasons best known to the respondent, he adopted dilatory tactics and thereby he lost a precious opportunity of getting promotion. Be that as it may, we find that the order passed by the authorities on 15.11.2002 forfeiting the promotion of the respondent was not preceded by any opportunity, and it is incumbent on the part of the authorities to have issued a show cause notice before getting the case of the respondent attracted under forfeiture clause. On that ground alone, we are inclined to set aside the order of the authority, but not on the ground, which was enumerated in the order of the Tribunal. Accordingly the direction given by the Tribunal in the present OA to promote the respondent herein to the post of Head Master as per his seniority with all consequential benefits is set aside and we leave it open to the authorities to deal with the matter in accordance with the Rules.

7. With the above modification, the Writ Petition is disposed of. No costs.

(G.BIKSHAPATHY, J.)

25th April, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

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SECTION OFFICER

To

1. Regional Joint Director of School Education, Hyderabad.
2 District Educational Officer, Medak District at Sangareddy.
3 Secretary, Education Department, Government of Andhra Pradesh, Secretariat,
Hyderabad.
4 Commissioner and Director of School Education,
Andhra Pradesh, Hyderabad.

5 The Registrar, A.P. Administrative Tribunal, Hyderabad.

6 2 CCs to Special G.P., High Court of A.P. Hyderabad. (OUT)

7 2 CD copies

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